

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

W. JAMES CONSTRUCTION, INC., a
California corporation; and PRO TOOL &
EQUIPMENT, INC.,

Plaintiffs,

v.

MJ DIESEL ENGINE SPECIALIST,
LLC, a Washington limited liability
company; and DOES 1 through 100,
inclusive

Defendants.

Case No.: 16-cv-02277-H-JMA

**ORDER DENYING AS MOOT
DEFENDANT'S MOTION TO
DISMISS COMPLAINT**

[Doc. No. 9.]

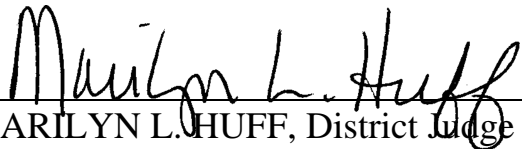
On September 9, 2016, Plaintiff W. James Construction, Inc. filed a complaint against Defendant MJ Diesel Engine Specialist, LLC, alleging causes of action for negligence and breach of contract. (Doc. No. 1.) On November 18, 2016, Defendant filed a motion to dismiss Plaintiff's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), or in the alternative, to transfer venue pursuant to 28 U.S.C. § 1404(a). (Doc. No. 9.)

In an effort to address the issues raised in Defendant's motion to dismiss, on December 5, 2016, Plaintiff filed a first amended complaint pursuant to Federal Rule of

1 Civil Procedure 15(a)(1), adding Pro Tool & Equipment, Inc. as an additional Plaintiff in
 2 the action. (Doc. No. 12.) On December 5, 2016, Plaintiffs also filed a response in
 3 opposition to Defendant's motion where Plaintiffs argue that the first amended complaint
 4 cures the claimed defects identified by Defendant in its motion to dismiss. (Doc. No. 13.)
 5 Accordingly, in light of Plaintiff's amended pleading, the Court denies as moot
 6 Defendant's motion to dismiss the original complaint, or in the alternative, to transfer
 7 venue without prejudice to Defendant renewing the motion based on the allegations in the
 8 first amended complaint. See Fleming v. Coverstone, No. 08CV355 WQH(NLS), 2008
 9 WL 4628397, at *2 (S.D. Cal. Oct. 17, 2008) ("[The amended pleading] contains
 10 significant additions and changes to the factual allegations in the [prior pleading]. In light
 11 of the significant changes in the [amended pleading], the Court denies the Motion to Strike
 12 and Motion to Dismiss the [prior pleading] as moot."); Salat v. Piroto, No. 2:14-CV-
 13 01468-MCE-AC, 2014 WL 6435509, at *1 (E.D. Cal. Nov. 14, 2014) ("The court finds
 14 that defendants' motion to dismiss is moot, as plaintiff's initial complaint has been
 15 superseded by his first amended complaint."); see also Forsyth v. Humana, Inc., 114 F.3d
 16 1467, 1474 (9th Cir. 1997) (An "'amended complaint supersedes the original, the latter
 17 being treated thereafter as non-existent.'").

18 **IT IS SO ORDERED.**

19 DATED: December 5, 2016

20 
 21 MARILYN L. HUFF, District Judge
 22 UNITED STATES DISTRICT COURT
 23
 24
 25
 26
 27
 28